IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 115 OF 1990

Shri Jawahar B. Athane. ...Applicant
V/s.
The Commissioner of Income-tax,
Kolhapur. ...Respondent

Mr.Pramod Vaidya i/b. S.N. Inamdar for Applicant.
Mr.Ashok Katangale for Respondent.

CORAM : V.C. DAGA AND
A.S. AGUIAR, JJ.
DATED : JULY 12, 2005.

P.C. :-

. By this reference, the following question of law has been referred for opinion of this Court under Section 256(1) of the Income Tax, 1961, by the Tribunal at the instance of the assessee Jawahar Athane, in R.A. No.954/PN/1987 arising out of ITA No.313/PN/1985 for the assessment year 1981-82.

> "Whether, on the facts and the circumstances of the case, the Tribunal was justified in law in holding that the share of profit of the assessee from M/s.B.D. Athane & Sons was assessable in the assessee's hands in the status of individual and that it was not assessable in the hands of the HUF of Shri Jawahar B. Athane?"

2. The factual matrix giving rise to the aforesaid question of law is as follows :-

. There was a Hindu Undivided Family of Baburao Devendra Athane consisting of himself, his wife and two minor sons one of whom was the assessee. On 31.3.1968 a partial partition of HUF took place. In this, the business was divided amongst the co-parceners. At the time of partition on 31.3.1968 the assessee was single and had no wife or children. With the share capital so received the business of M/s.B.D. Athane & Sons was started. Upto assessment year 1980-81, the assessee was being assessed as individual, although on 22.2.1973 the assessee was married and two daughters were born on 4.8.1974 and 20.11.1975 respectively. For the first time, for assessment year 1981-82, the assessee claimed the status of HUF in respect of income arising from M/s.B.G. Athane & Sons.

3. The ITO rejected the claim largely relying upon the decision of **Madhya Pradesh** High Court in **Commissioner of Income-Tax, M.P.-I Vs. VishnuKumar**

Bhaiya (1983) 142 ITR 357. In the first appeal, the AAC allowed the claim for the reasons given in his order. In the second appeal, at the instance of Revenue, the Tribunal restored the order of the ITO for the reasons given in its order. Apart from Madhya Pradesh High Court Judgment, the Tribunal also took a note of a later full Bench Judgment in **CIT Vs.Shankarlal Budhia (1987) 165 ITR 380.**

4. A similar question of law which had arisen in the case of **Dr.Prakash Sultane v. Commissioner of Income-Tax, in R.A.Nos.614 & 615(PN) of 1986 arising out of ITA Nos.1603 & 1604 (PN) of 1985,** has been decided by this Court by order dated 9th August, 2005 in **I.T.R. No.138 of 1988**. By the said order, this Court has allowed the appeal of the assessee and answered the question referred to for opinion in the negative i.e. against the revenue and in favour of the assessee.

5. In view thereof, the present reference also stands disposed of in terms of the order of this Court dated 9th August, 2005 in ITR No.138 of 1988.

(A.S. AGUIAR, J.) **(V.C. DAGA, J.)**